

TESTIMONY OF DAVE BERGMAN

Chairman Meadows and members of the Committee, my name is Dave Bergman. I am here today to testify on behalf of the Major League Baseball Players Association, the union which represents all current major league players. I'm sure some of the members of the current Tigers team would want to be here, but they are in New York City, playing the Yankees, so I was delighted to step in on their behalf, as well as on behalf of the more than 1,000 *current* major league players, and the more than 15,000 in history who have been lucky enough to play the greatest game in the world at its highest level.

I am a former professional baseball player. I was 22 when I began my career with the New York Yankees in 1975. Over the course of the next 19 years, I played with four teams, including 8 years as a proud member of the Detroit Tigers. I had the great fortune to be part of the World Championship team in 1984.

With my testimony today, I would like to make three simple points. First, as my colleagues have said today, House Bill 5964 is not a fair bill. It does not strike a fair balance among competing interests. It does not even accomplish what some have suggested it is intended to do. In real terms, it says that the career I spent a lifetime creating, the accomplishments I achieved, my reputation – all of it can be used by others for their commercial gain. And they can do it without my permission.

The bill also says that those who want to profit from my name - from the names, images, work and careers of every single Detroit Tiger – those commercial

interests are somehow more important than a player's interest in his own life or the interests of the player's family. It is a puzzling position to say the least.

Today, in Michigan and around the country, that is not how the law works. Today, if someone wants to make a video game that uses the likeness of Magglio Ordonez or Justin Verlander, they need to talk to him first. In other words, both players have some control over how their likenesses are being used and for what purpose. That will not be true if House Bill 5964 passes.

Second, the reach of this law extends far beyond just video games. Today, if a company decides to make money by selling a bobble head of Miguel Cabrera or a T-shirt with his likeness, that company first needs his permission. Again, if House Bill 5964 is enacted, that would no longer be true. Before you vote on this bill, I hope you will ask yourself - why should Miguel have fewer rights in Michigan than Derek Jeter has in New York ... or Jack Morris has in Missouri or Georgia?

If House Bill 5964 becomes law, the only limitation on how an athlete's image is used would be the creative limits of those hoping to exploit the player's reputation. Moreover, as others have pointed out, this exploitation is not limited to professional athletes. This would apply to *anyone* whose likeness, reputation, and career is thought to have some commercial value.

Third, the bill suggests that a team's interest in the image and likeness of a player is more important than the player's interest. If the bill is enacted and someone wants to make a bobble head of Miguel Cabrera in his Tiger's uniform hitting a home run or a figurine of Jose Valverde celebrating a save, they would not need the permission of either Miguel or Jose -- but they would need the permission of the Detroit Tigers.

In other words, the bill leaves intact the *team's* ability to control how its logo is used and by whom. Of course, that right is protected under federal law. But as you know, the players have no comparable federal right. Protection of an individual's right of publicity is left to each state, whether the individual is a professional athlete or someone working in an office building in downtown Detroit. We hope you will take protecting these rights as seriously as the federal government takes protecting the names, logos, and other intellectual property of commercial enterprises, including baseball teams.

As one last example, imagine if you will that one of your children or grandchildren can throw a fast ball like Stephen Strasburg or hit a baseball like Josh Hamilton. Imagine she can bend a curve like Jennie Finch. Now ask yourself who you'd want in control of his reputation, her image, their careers. Would it be a video game company located in Asia? A T-shirt manufacturer in Central America? A souvenir company in Florida? Or do you want your child....your grandchild to be in control?

Again, I want to thank you for the opportunity to testify. I realize the challenges you face are daunting, and can only imagine the pressure you and all elected officials are under today to find the right solutions to the problems confronting this state and the nation. I respectfully suggest, however, that House Bill 5964 is not one of the right solutions.

Thank you, Mr. Chairman, for your courtesy. I would be happy to answer any questions you or the Committee may have.